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PREVENTION OF DISCRIMINATION

PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

Indigenous peoples' permanent sovereignty over natural resources

Working paper by Erica-Irene A. Daes, former Chairperson-Rapporteur of the Working Group on Indigenous Populations

1. The Sub-Commission on the Promotion and Protection of Human Rights in paragraph 18 of its resolution 2001/10 requested Ms. Erica-Irene Daes to prepare a working paper on indigenous peoples' permanent sovereignty over natural resources, which is relevant to her study on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21). The present working paper is submitted in accordance with the above-mentioned resolution.

2. In the decades after the Second World War the principle of international law of permanent sovereignty over natural resources became a central principle of decolonization and an essential aspect of self-determination. This principle that peoples and nations have permanent ownership of and control over their natural wealth and resources is a principle that should now be applied to the world's indigenous peoples.

3. In our times, practically every State claims for itself sovereignty over natural resources while denying this right, in whole or in part, to indigenous peoples. It is my opinion, that we should now begin to consider this important problem, to examine systematically all its aspects and to discuss it with States, in order to uphold indigenous peoples' right to permanent sovereignty over their natural resources.

4. In this respect, first of all, the following important principle should be briefly examined: peoples and nations must have the authority to control and enjoy the benefits of the development and conservation of their natural resources. This principle in modern law arose from the struggle of colonized peoples to achieve political and economic self-determination after the Second World War. Since the early 1950s the principle has been advocated as a means of securing for peoples living under colonial rule the economic benefits derived from the natural resources within their territories and to give newly independent States the legal authority to combat and redress the infringement of their economic sovereignty arising from oppressive and inequitable contracts and other arrangements.

5. The United Nations has been the birthplace of this principle and the main forum for its development and implementation. Relevant resolutions were first adopted by the General Assembly in the early 1950s, giving initial recognition to this concept. In 1958, the General Assembly established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination. But it was General Assembly resolution 1803 (XVII) in 1962 that gave the principle momentum under international law in the decolonization process. In this historic resolution the Assembly declared, inter alia:

> "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
>
> "The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities."

In the above-mentioned resolution, the General Assembly further declared:

> "Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace."

6. In all, the United Nations has adopted more than 80 resolutions relating to the principle of permanent sovereignty over natural resources. Moreover, the substance of the principle has been incorporated in the draft declaration on the rights of indigenous peoples. However, this principle has not yet been duly analysed and expressly considered, in particular in the context of the rights of indigenous peoples.

7. It is apparent that this basic principle of permanent sovereignty over natural resources applies as well to indigenous peoples for the following reasons, among others:

(a) Indigenous peoples are colonized peoples in the economic, political and historical sense;

(b) Indigenous peoples suffer from unfair and unequal economic arrangements typically suffered by other colonized peoples;

(c) The principle of permanent sovereignty over natural resources is necessary to level the economic and political playing field and to provide protection against unfair and oppressive economic arrangements;

(d) Indigenous peoples have a right to development and actively to participate in the realization of this right; sovereignty over their natural resources is an essential prerequisite for this;

(e) The natural resources originally belonged to the indigenous peoples concerned and were not freely and fairly given up.

8. It will be important to consider and define the precise nature and scope of the principle of permanent sovereignty over natural resources in its application to indigenous peoples. What are the meaning and effect of the principle in regard to indigenous peoples?

9. The principle of permanent sovereignty over natural resources should be thoroughly studied in all its aspects as it applies to indigenous peoples and the States in which they are living. The views and comments of the indigenous peoples, Governments, specialized agencies, and other intergovernmental and non-governmental organizations concerned should be discussed and taken into consideration. The multilateral development banks and other competent financial institutions should be given the opportunity to express their views during the elaboration of the study of this principle.

10. In this respect, the following preliminary work plan is proposed for consideration by the Sub-Commission for a study entitled: "Indigenous peoples' permanent sovereignty over natural resources".

(i) Introduction. Outline of the central problem; a brief overview of the history of permanent sovereignty over natural resources as a principle of international law; references to the relevant articles of the draft United Nations declaration on the rights of indigenous peoples and to relevant sections of the working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21);

(ii) Review the history and mechanisms of permanent sovereignty over natural resources in the United Nations system in order to assess the usefulness of these ideas and mechanisms in the context of indigenous peoples today; analysis of the

state of international law concerning indigenous permanent sovereignty over natural resources and of the need for evolution of the law to encompass the situation of indigenous peoples within countries. Identification of situations where conflicts over natural resources and permanent sovereignty over natural resources have been resolved in a constructive way;

(iii) Conclusions and recommendations, including basic guiding principles;

(iv) Annex: Relevant legal standards and materials concerning indigenous peoples and sovereignty over natural resources:

Selected bibliography;

Cases, including the Decision of the Inter-American Court of Human Rights in the case of the Indigenous Mayagna Community of Awas Tingni versus the Government of Nicaragua (17 September 2001).

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